IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.663 OF 2004

Bapuso Govind Katkar .. Appellant

Versus

Bapu Shivappa Aambi & Anr. .. Respondents

Mr.M.V.Limaye with M.S.Lagu for appellant

None for respondents

CORAM : P.V.KAKADE, J.

DATE : 20TH JUNE, 2005.

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by Ad-hoc Addl. District Judge, Kolhapur dated 20.12.2003 allowing the appeal and setting aside the order passed by Civil Judge, Junior Division, Jaysingpur decreeing the suit for compensation for libel against the defendants.

2. I have heard the learned counsel for the appellant. Perused the record.

3. The suit was filed by the plaintiff for the civil damages of Rs.10,000/= on the ground that certain article was published in daily newspaper "Sakal" dated 7.2.1996 against the plaintiff. For that purpose the plaintiff subsequently issued notice to the defendants and when it was not replied the suit came to be filed on 17.7.1997.

4. The learned trial judge on the basis of available evidence adjudicated the dispute and decreed the suit holding that the plaintiff had proved publication of news item which amounted to libel and thereby caused damage to the image of plaintiff among his relatives, friends etc. No issue of limitation was raised in the course of trial, thus the learned trial judge had no reason to deal with that aspect. The appeal was carried to the District Court. The learned District Judge heard both the sides and allowed the appeal and dismissed the suit basically on the ground of bar of limitation relying on the provision of Article 75

of the Limitation Act, which provides the period of one year to institute the suit for compensation for libel.

5. The learned counsel for the appellant vehemently urged that no issue of limitation was ever raised in the lower court and therefore, when it was raised for the first time in the lower appellate court, it should not have dismissed the suit on that count. It was further urged that the period of limitation would be governed by virtue of Section 23 of the Limitation Act and limitation period should be counted and be held as started running from the date of receipt of the notice issued by the plaintiff to the defendants. However, perusal of provision of Section 23 of the Limitation Act read with Article 75 makes it clear that the concession given by Section 23 is not available to the plaintiff and provision of Article 75 is to be made applicable. So far as non raising of point of limitation in the trial court, it is needless to say that it was a pure question of law, and therefore, could be taken up in the first appellate court and pending the appeal in the first appellate court, and therefore, no error of law is committed by the lower appellate court.

6. In the result no substantial question of law is involved in this appeal and as such the appeal stands dismissed.